

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DENNIS L. TAYLOR,

Plaintiff,

v.

HAL NEDERLAND N.V., et al.,

Defendants.

CASE NO. C04-167RSM

ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

This matter is again before the Court for consideration of defendants' motion for summary judgment on the issue of liability (Dkt. # 14). On September 8, 2005, the Court determined that it was appropriate to defer ruling on the motion until the Court, Chief Judge Lasnik presiding, had issued a ruling following a Daubert hearing scheduled for September 21, 2005, in a companion case, Lamprecht v. HAL Nederland N.V., C04-166RSL. The parties were given an opportunity to file supplemental briefs addressing the effect of Judge Lasnik's ruling on the liability issue in this case. Having considered the supplemental memoranda, together with the memoranda, declarations, and depositions filed previously in this case, the Court now DENIES defendant's motion for summary judgment.

The facts and prior proceedings are well known to the parties; they are not restated herein except as necessary to the resolution of this matter. Briefly stated, this case arises from a malfunction in the steering component of a cruise ship, the S/S RYNDAM, upon which plaintiff was a passenger. It caused the ship to turn sharply to starboard and heel over, tilting the decks. Plaintiff, who was seated in the dining room at the time, stood up in response to the tilt and was thrown down, breaking his hip and wrist.

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1 Plaintiff asserts that his injuries were caused by defendants' negligence in operating the vessel.

2 In his initial order on summary judgment in the Lamprecht case, Judge Lasnik granted defendant's
3 motion "as to all of plaintiff's theories of negligence except the theory proposed by Dr. Wilson, that the
4 second mate's reaction to the mechanical failure violated the STCW [Standards of Training, Certification
5 and Watchkeeping] in failing to reduce speed and activate the NFU [non-follow-up tiller] within fifteen
6 seconds after the failure was discovered." Lamprecht v. HAL Nederland N.V., C04-0166RSL, Dkt. #
7 29. A Daubert hearing was scheduled to consider the admissibility of Dr. Wilson's opinion. Following
8 the hearing, Judge Lasnik ruled that Dr. Wilson's opinion was not excessively speculative and was "based
9 on sufficient facts and data to warrant its admissibility." Lamprecht, Dkt. # 29. Finding that issues of
10 fact remained regarding the second mate's response to the steering malfunction, the Court denied
11 defendant's motion for summary judgment.

12 In the supplemental briefing, plaintiff urges this Court to adopt Judge Lasnik's ruling on Dr.
13 Wilson's opinion. Plaintiff has also withdrawn one witness, Captain Levine, as well as all theories of
14 negligence other than the one based on Dr. Wilson's opinion. This witness and these other theories of
15 negligence had already been rejected from the Lamprecht case by Judge Lasnik's earlier ruling on
16 summary judgment. Due to the deferral of the ruling in this matter, the Court had not yet addressed these
17 theories of negligence, but need not do so now as plaintiff's withdrawal renders them moot.

18 Judge Lasnik's ruling in Lamprecht left a single liability issue for trial, "regarding plaintiffs'
19 allegation that the second mate's reaction to the mechanical failure violated the STCW in failing to
20 reduce speed and activate the NFU shortly after the failure was discovered." Lamprecht, Dkt. # 32. In
21 their supplemental memorandum, defendants contend that this Court should not adopt Judge Lasnik's
22 ruling as to the admissibility of Dr. Wilson's expert opinion and the resulting factual issue surrounding the
23 second mate's actions. Defendants argue that there is evidence before this Court which was not before
24 Judge Lasnik, and that evidence renders Mr. Wilson's opinion irrelevant on the issue of causation.
25 "Specifically, the Declaration of Paul Wagner in this case establishes that the Second Mate could not have
26 reduced the vessel's speed in time to prevent plaintiff's injuries from occurring." Defendants'
27 Supplemental Memorandum, p. 5.

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1 Paul Wagner is a marine engineer with considerable experience in research and design of marine
2 steering systems. Declaration of Paul Wagner, Dkt. # 15, p. 2. As defendants' expert, he filed
3 declarations in both this case and in Lamprecht, presenting the following timeline which he developed "to
4 a reasonable degree of engineering probability":

5 1819: Switch to hand steering mode in preparation for rounding a turning buoy.

6 1820: A small rate of turn was recorded with a small change in heading. The relay
7 welding likely occurred 10-15 seconds before and would have been without notice or
8 warning.

8 1820 + 10 seconds: The Second Officer noticed a heading discrepancy, which is not an
9 unusual event at sea and would not be a reason for suspecting a problem, let alone a
10 problem with the steering system itself; Second Officer interrogated the AB who was
11 steering and received advice that the rudder was not responding.

11 1820 + 30 seconds: The Second Officer then looked at the rudder angle indicator which
12 showed midships rudder, but also noted that the vessel was turning to starboard. This is
13 the first point at which some type of a problem with the steering system would be suspected.
14 At this point, he Second Officer properly told the other AB to get the Master and went back
15 to the steering console where he stood behind the wheel to observe steering response to
16 further diagnose the nature of the problem.

14 1820 + 45 seconds: The Second Officer commanded port rudder, but the rudder did not
15 respond. He then selected the steering mode back to autopilot and then returned to manual
16 wheel, believing that the steering mode had not transferred correctly. By this time, significant
17 heel and angular acceleration would have developed such that the accident complained of—falling
18 over in a chair—would have occurred.

17 1821: A peak rate of turn was recorded. Maximum acceleration occurs at the maximum rate of
18 turn.

18 Lamprecht, C04-166RSL, Dkt. # 15, pp. 2-3; Taylor, C04-167RSM, Dkt. # 15, pp. 7-8.

19 In Lamprecht, Mr. Wagner subsequently opined that

20 [p]assengers would have fallen out of their chairs before the maximum rate of turn
21 occurred. Clearly, such would have happened in a very short period of time after the
22 relay welded. According to my analysis, it would have occurred approximately 15
23 seconds after the vessel's bridge could have reasonably known that there was a problem
24 with the steering system, and therefore concurrent with actions taken by the crew to
25 diagnose and correct the steering failure. No sooner response from the crew was
26 reasonably possible.

24 Reply Declaration of Paul Wagner, C04-166RSL, Dkt. # 20, p. 4. Thus, Mr. Wagner's opinion that
25 earlier action by the crew could not have averted the heel-over was already before the Court when Judge
26 Lasnik found Dr. Wilson's contrary opinion admissible, creating an issue of fact. *See*, Supplemental
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1 Order Regarding Motion for Summary Judgment, C04-166RSL, Dkt. # 32, p. 2.

2 Nevertheless, defendants argue that Mr. Wagner has offered additional information in this case,
3 “which allows this Court to completely evaluate the relevance of Dr. Wilson’s sole surviving opinion to
4 the ultimate issues of causation and liability . . .” Defendant’s Supplemental Memorandum, p. 5. The
5 additional information cited by defendants is found in the last paragraph of Mr. Wagner’s declaration in
6 this case:

7 Marc Wilson seems to believe that the crewmembers should have reduced the vessel’s
8 speed as soon as a problem was detected. But a reduction in speed would not have
9 significantly reduced the vessel’s heel for at least a minute after the command would
10 have been given. Changing the pitch of the vessel’s propellers to bring the speed to zero
11 would take at least 15 seconds, and then water resistance against the hull would gradually
12 reduce the vessel’s significant forward momentum. Slowing the vessel would have been
13 a lengthy process and would have only reduced the vessel’s heel after the plaintiff’s injury
14 occurred.

15 Declaration of Paul Wagner, Dkt. # 15, p. 12. This is opinion, not information. Neither is it “new” as
16 described by defendants; it is not significantly different from the opinion, quoted above, that was before
17 Judge Lasnik and considered by him in his ruling on summary judgment. Moreover, it misstates both the
18 evidence and Dr. Wilson’s opinion. Mr. Wagner stated in his timeline, set forth above, that within forty-
19 five seconds after the initiation of the turn, the injury, described as “falling over in a chair,” would already
20 have occurred. Plaintiff Taylor, however, did not fall over in his chair; he stood up and then lost his
21 balance due to the tilt of the vessel. Mr. Wilson’s opinion was that plaintiff’s injury could have been
22 averted if the second mate had reduced speed within a short time of the occurrence of the steering
23 malfunction, not within the **detection** of that malfunction. As stated by Judge Lasnik, “Dr. Wilson
24 testified that if the crew had reduced the vessel’s speed within a minute after the malfunction, the list
25 would have been barely noticeable to passengers.” Supplemental Order on Summary Judgment, C04-
26 166RSL, Dkt. # 32, p. 2. Finally, Mr. Wagner is an engineer, not a seaman; he has not stated any basis
27 for his opinions, stated in the timeline, as to when the crew could or would have noticed a problem, and
28 how they should have responded. Nor has he addressed the probable effect on the vessel’s tilt had the
crew immediately reduced speed at 1820, when the vessel began to change course; instead he opines that
a reduction in speed ordered thirty seconds later, at 1820 + 30 seconds (when according to him the

1 problem could first have been detected), would not have averted the tilt and resulting injury. This
2 discrepancy between Mr. Wagner's opinion and Dr. Wilson's is an issue of fact for trial.

3 Thus, the Court declines to find in Mr. Wagner's new declaration any basis for not following
4 Judge Lasnik's September 26, 2005 ruling in Lamprecht. Issues of fact remain as to whether the second
5 mate's response to the malfunction was reasonable, whether it violated the applicable Standards of
6 Training, Certification and Watchkeeping, and whether an earlier response by the crew could have
7 averted plaintiff's injury. Therefore, defendants' motion for summary judgment on plaintiff's sole
8 remaining theory of negligence is DENIED.

9 The Court notes that this matter is currently set for a bench trial beginning November 7, 2005. A
10 motion by plaintiff to consolidate this case with Lamprecht is noted for October 28, 2005. In the event
11 that motion is denied, the November 7 trial date will be have to be continued due to a conflict on the
12 Court's calendar. Accordingly, the Court now STRIKES the November 7, 2005 trial date and all
13 associated dates for pretrial preparation. New dates shall be set, if appropriate, following the Court's
14 ruling on the motion to consolidate.

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16 DATED this 18 day of October, 2005.

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19 RICARDO S. MARTINEZ
20 UNITED STATES DISTRICT JUDGE
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